NOV - 2

No. 14-981

In the Supreme Court of the United States

ABIGAIL NOEL FISHER,

Petitioner,

v

UNIVERSITY OF TEXAS AT AUSTIN, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Brief of Massachusetts, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Mississippi, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, and Washington as *Amici Curiae* in Support of Respondents

MAURA HEALEY
Attorney General of Massachusetts
ELIZABETH N. DEWAR
Assistant State Solicitor
GENEVIEVE C. NADEAU*
JARED RINEHIMER
KIMBERLY STROVINK
MAX WEINSTEIN
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
genevieve.nadeau@state.ma.us
(617) 727-2200
**Counsel of Record*

(Counsel continued on inside cover)

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF INTEREST 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

I. STATES HAVE A COMPELLING INTEREST IN PROVIDING FUTURE PUBLIC SERVANTS AND OTHER LEADERS WITH THE BENEFITS OF DIVERSITY IN PUBLIC HIGHER EDUCATION 3

A. Public Colleges and Universities Are Gateways for Public Service and Other Forms of Civic Leadership 4

B. Public Institutions Also Prepare Students for Leadership and Work in the Private Sector 9

C. Diversity in Higher Education Best Prepares Graduates to Work and Serve in a Diverse Country and Multicultural World 12

II. STATES' COMPELLING INTEREST IN DIVERSITY IN HIGHER EDUCATION IS UNDERSCORED BY THE IMPORTANT ROLE STATE INSTITUTIONS PLAY IN PROVIDING OPPORTUNITY TO STUDENTS FROM HISTORICALLY DISADVANTAGED COMMUNITIES 17

A. Public Colleges and Universities Provide Access to Opportunity and Economic Mobility 18

B. Public Colleges and Universities Are Increasingly Important As the Costs of Higher Education and Student Debt Continue to Rise 22

1. Rising Private Tuition Costs Have Saddled Students—Including Students of Color—With Burdensome Debt, Limiting Their Choices and Opportunities 23

2. Public Colleges and Universities Offer a More Affordable Option for High-Quality Higher Education 29

III. STATES NEED FLEXIBILITY IN TAILORING ADMISSIONS POLICIES TO MEET THE NEEDS OF OUR VARIED EDUCATIONAL SYSTEMS 31

CONCLUSION 36

TABLE OF AUTHORITIES

CASES

Fisher v. Univ. of Texas at Austin,
133 S. Ct. 2411 (2013) 32, 33, 36

Fisher v. Univ. of Texas at Austin,
758 F.3d 633 (5th Cir. 2014) 33, 34, 35

Grutter v. Bollinger,
539 U.S. 306 (2003) ..... *passim*

Regents of Univ. of Cal. v. Bakke,
438 U.S. 265 (1978) 32, 33, 34

Schuette v. Coalition to Defend Affirmative Action,
134 S. Ct. 1623 (2014) 33, 34

STATUTES AND REGULATIONS

31 C.F.R. § 285.11 (2015) 27

11 U.S.C. § 523(a)(8) (2012) 28

31 U.S.C. § 3716(c)(1)(A) (2012) 28

31 U.S.C. § 3720A(c) (2012) 28

RULES

Sup. Ct. R. 37.4 1

OTHER AUTHORITIES

Alma Mater Index: Global Executives 2013, Times Higher Educ. (Sept. 5, 2013), https://www.timeshighereducation.com/news/alma-mater-index-global-executives-2013/2007032.article ... 11

Brent W. Ambrose, et al., *The Impact of Student Loan Debt on Small Business Formation* (July 15, 2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2417676 27

Anthony Lising Antonio, et al., *Effects of Racial Diversity on Complex Thinking in College Students*, 15 Psychol. Sci. 507 (2004) 14

Appeals Court Justices, Mass. Court Sys., http://www.mass.gov/courts/court-info/appealscourt/appeals-court-justices/ 7

Assembly Members, N.Y. State Assembly, http://assembly.state.ny.us/mem/ 7

Martha J. Bailey & Susan M. Dynarski, *Inequality in Postsecondary Attainment*, Greg Duncan and Richard Murnane, eds., Whither Opportunity?: Rising Inequality, Schools, and Children's Life Chances, Russell Sage Foundation (2011) 21

Sandy Baum & Patricia Steele, College Bd. Advocacy & Policy Ctr., *Who Borrows Most? Bachelor's Degree Recipients with High Levels of Student Debt* (2010), https://trends.collegeboard.org/ sites/default/files/trends-2010-who-borrows-most-brief.pdf 26

Josh Boak, *A Multigenerational Hit: Student Debt Traps Parents and Kids*, St. Louis Post-Dispatch (Oct. 5, 2015), http://www.stltoday.com/business/national-and-international/a-multigenerational-hit-student-debt-traps-parents-and-kids/article_3d2f5adb-538f-5ec8-8314-8977ff4f3048.html 27

Nicholas A. Bowman, *College Diversity Experiences and Cognitive Development: A Meta-Analysis*, 80 Rev. Educ. Res. 4 (2010) 14

Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civil Engagement*, 81 Rev. Educ. Res. 29 (2011) 15

Brief Amicus Curiae of the President and Chancellors of the University of California, Fisher v. Univ. of Texas at Austin, 133 S. Ct. 2411 (2013) 34, 35

Brief for Amici Curiae 65 Leading American Businesses in Support of Respondents, Grutter v. Bollinger, 539 U.S. 306 (2003) 16

Brief of General Motors Corporation as Amicus Curiae in Support of Respondents, Grutter v. Bollinger, 539 U.S. 306 (2003) 16

Meta Brown et al., Fed. Reserve Bank of N.Y.: Liberty Street Economics, *The Student Loan Landscape* (Feb. 18, 2015) http://libertystreeteconomics.newyorkfed.org/2015/02/the_student_loan-landscape.html 22

Meta Brown & Sydnee Caldwell, Fed. Reserve Bank of N.Y.: Liberty St. Econ., *Young Student Loan Borrowers Retreat from Housing and Auto Markets* (Apr. 27, 2013), http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html 24, 26

Consumer Fin. Prot. Bureau, *Student Loan Servicing: Analysis of Public Input and Recommendations for Reform* (2015) 22

Nida Denson & Mitchell J. Chang, *Racial Diversity Matters: The Impact of Diversity-Related Student Engagement and Institutional Context*, 46 Am. Educ. Res. J. 322 (2009) 13

Greg J. Duncan & Richard J. Murnane, Russell Sage Foundation, *Restoring Opportunity: The Crisis of Inequality and the Challenge for American Education* (2014) 19, 21

William R. Emmons & Bryan J. Noeth, Fed. Reserve Bank of St. Louis, *Why Didn't Higher Education Protect Hispanic and Black Wealth?*, In the Balance: Perspectives on Household Balance Sheets (Aug. 2015), https://www.stlouisfed.org/~/media/Publications/In%20the%20Balance/Images/Issue_12/ITB_August_2015.pdf 20

Mark E. Engberg, *Educating the Workforce for the 21st Century: A Cross-Disciplinary Analysis of the Impact of the Undergraduate Experience on Students' Development of a Pluralistic Orientation*, 48 Res. Higher Educ. 283 (2007) . 15

Exec. Office of the President, *Increasing College Opportunity for Low-Income Students*, 3 (2014), https://www.whitehouse.gov/sites/default/files/docs/white_house_report_on_increasing_college_opportunity_for_low-income_students_1-16-2014_final.pdf 21, 22

Amia K. Foston & Tanya Hall, *Indiana Graduates and Brain Drain*, In Context, Indiana Business Research Center (Jan.-Feb. 2014), http://www.incontext.indiana.edu/2014/jan-feb/article1.asp 9

Scott A. Ginder, Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *Enrollment in Postsecondary Institutions, Fall 2013; Financial Statistics, Fiscal Year 2013; and Employees in Postsecondary Institutions, Fall 2013* (2014) http://nces.ed.gov/pubs2015/2015012.pdf 4

Michael Greenstone & Adam Looney, *A Record Decline in Government Jobs: Implications for the Economy and America's Workforce*, The Hamilton Project, Brookings Inst. (Aug. 3, 2012) http://www.brookings.edu/blogs/jobs/posts/2012/08/03-jobs-greenstone-looney 7

Lani Guinier, *The Supreme Court, 2002 Term – Comment: Admissions Rituals as Political Acts: Guardians at the Gates of our Democratic Ideals*, 117 Harv. L. Rev. 113 (2003) 5

Tyler Hakes, *Senate U 2015: Where the 114th U.S. Senate Went to College*, College Raptor https://www.collegeraptor.com/blog/college-trends/senate-u-2015-where-the-114th-u-s-senate-went-to-college/ 8

Honeywell Leadership, https://honeywell.com/About/Honeywellleadership/Pages/david-cote.aspx 11

Inst. for College Access & Success, *Default Rate Declines, Yet 611,000 Defaulted on Federal Student Loans* (2015) http://ticas.org/sites/default/files/pub_files/cdr_2015_nr.pdf 29

Inst. for College Access & Success, *Student Debt and the Class of 2013* (2014), http://ticas.org/sites/default/files/legacy/files/pub/classof2013.pdf 25

Phil Izzo, *Congratulations to Class of 2014, Most Indebted Ever*, Wall St. J.: The Numbers, (May 16, 2014) http://blogs.wsj.com/numbers/congatulations-to-class-of-2014-the-most-indebted-ever-1368/ 24

Peter Jacobs, *You'll Be Surprised by Where the Most Powerful Fortune 500 CEOs Went to College*, Business Insider (Mar. 26, 2015), http://www.businessinsider.com/where-fortune-500-ceos-went-to-college-2015-3 11

Grace Kena et al., Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *The Condition of Education 2015* (2015), http://nces.ed.gov/pubs2015/2015144.pdf 28

Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Pew Res. Ctr.: Fact Tank (Dec. 12, 2014), http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/ 19

Mindy L. Kornhaber, *Reconfiguring Admissions to Serve the Mission of Selective Public Higher Education* (Jan. 14, 1999) (unpublished manuscript) http://civilrightsproject.ucla.edu/research/college-access/admissions/reconfiguring-admissions-to-serve-the-mission-of-selective-public-higher-education/kornhaber-reconfiguring-admissions-1999.pdf 5

Longhorn Legislators, Tex. Exes, https://www.texasexes.org/longhorn-legislators 7

Glenn C. Loury, *Foreword* to William G. Bowen & Derek Bok, *The Shape of the River* (1999) 12

Jiali Luo & David Jamieson-Drake, *A Retrospective Assessment of the Educational Benefits of Interaction Across Racial Boundaries*, 50 J. C. Student Dev. 67 (2009) 14

Members, Cal. State Assembly, http://assembly.ca.gov/assemblymembers 8

Microsoft CEO, http://news.microsoft.com/CEO/INDEX.HTML 11

Ana Patricia Munoz et al., Fed. Reserve Bank of Bos., *The Color of Wealth in Boston* (2015), http://www.bostonfed.org/commdev/color-of-wealth/color-of-wealth.pdf 18

Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *Digest of Education Statistics, Table 306.50* (2014), http://nces.ed.gov/programs/digest/d14/tables/dt14_306.50.asp?current=yes 25

Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *Digest of Education Statistics, Table 317.20* (2014), https://nces.ed.gov/programs/digest/d14/tables/dt14_317.20.asp?current=yes 3, 4

Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *Digest of Education Statistics, Table 331.60* (2014), http://nces.ed.gov/programs/digest/d14/tables/dt14_331.60.asp 25

Nat'l Ctr for Educ. Statistics, U.S. Dep't of Educ., *Digest of Educ. Statistics, Table 331.95* (2014), http://nces.ed.gov/programs/digest/d14/tables/dt14_331.95.asp 24, 26, 30

Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *Fast Facts: Tuition Costs of Colleges and Universities* (2015), http://nces.ed.gov/FastFacts/display.asp?id=76 ..... 23, 24

Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *Higher Education: Gaps in Access and Persistence Study* (August 2012), https://nces.ed.gov/pubs2012/2012046.pdf 18

Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *Students Attending For-Profit Postsecondary Institutions: Demographics, Enrollment Characteristics, and 6-Year Outcomes* (2011), http://nces.ed.gov/ pubs2012/2012173.pdf . 25, 28

Nat'l Consumer Law Ctr., *Government Investigations and Lawsuits Involving For-Profit Schools (2004 – May 2014)* (2014), https://www.nclc.org/images/pdf/pr-reports/for-profit-gov-investigations.pdf 29

National Universities Rankings, U.S. News & World Report, http://colleges.usnews.rankingsandreviews.com/best-colleges/rankings/national-universities?int=9ff208 ..... 30, 31

Lynn O'Shaughnessy, *The States Where College Students Stay Close to Home*, The College Solution (May 12, 2010), http://www.thecollegesolution.com/the-states-where-college-students-stay-close-to-home/ 9

Paths to Professions, Wall St. J. (Sept. 13, 2010), http://www.wsj.com/public/page/rankings-career-college-majors.html 10

People, Mass. Legislature, https://malegislature.gov/People 7

Pew Charitable Trusts, *Pursuing the American Dream: Economic Mobility Across Generations* (2012), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/economic_mobility/pursuingamericandreampdf.pdf 20, 21

Jeff Pierpont, *House of Reps: Where Did the House Go to College*, College Raptor, https://www.collegeraptor.com/blog/college-trends/house-of-reps-where-did-the-house-go-to-college-infographic/ 8

Jesse Rothstein & Cecelia Elena Rouse, *Constrained After College: Student Loans and Early Career Occupational Choices* (Nat'l Bureau Econ. Research Working Paper 13117, May 2007), http://www.nber.org/papers/w13117.pdf 27

Senators, Cal. St. Senate, http://senate.ca.gov/senators 8

Senators, Committees, and Other Legislative Groups, N.Y. St. Senate, http://www.nysenate.gov/senators-committees 7, 8

Thomas Shapiro, et al., Inst. on Assets & Soc. Policy, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide* (2013), http://iasp.brandeis.edu/pdfs/Author/shapiro-thomas-m/racialwealthgapbrief.pdf 18, 19, 21

Starbucks Newsroom, *Executive Team*, https://news.starbucks.com/leadership/howard-schultz 11

State University of New York Mission Statement, https://www.suny.edu/about/mission/ 5

Supreme Judicial Court Justices, Mass. Court Sys., http://www.mass.gov/courts/court-info/sjc/about/sjc-justices/ 7

The College Board, *Trends in College Pricing 2014* (2014), https://secure-media.collegeboard.org/digitalServices/misc/trends/2014-trends-college-pricing-report-final.pdf 30

The College Board, *Trends in Student Aid 2014* (2014), https://secure-media.collegeboard.org/digitalServices/misc/trends/2014-trends-student-aid-report-final.pdf. 30

Treasury Offset Program (TOP), Bureau of the Fiscal Serv., https://fiscal.treasury.gov/fsservices/gov/debtColl/dms/top/debt_top.htm 28

Tuition Inflation, FinAid, http://www.finaid.org/savings/tuition-inflation.phtml 23

UMass News & Media Relations, *About UMass*, https://www.umass.edu/newsoffice/resources/about-umass 9

Understanding Default, Fed. Student Aid, U.S. Dep't of Educ., https://studentaid.ed.gov/sa/repay-loans/default 28

University of Illinois Mission & Vision, https://www.uillinois.edu/ about/mission 5

University of Massachusetts Mission Statement, http://www.massachusetts.edu/about-umass-system/overview 5

University of Texas at Austin, U.S. News & World Report, http://colleges.usnews.rankingsandreviews.com/best-colleges/university-of-texas-3658 31

U.S. Census Bureau, *Overview of Race and Hispanic Origin: 2010* (2011), http://www.census.gov/prod/ cen2010/briefs/c2010br-02.pdf 13

U.S. Census Bureau, *Projections of the Size and Composition of the U.S. Population: 2014 to 2060* (2015), https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf 13

Menachem Wecker, *Where the Fortune 500 CEOs Went to School*, U.S. News & World Report (May 14, 2012), http://www.usnews.com/education/best-graduate-schools/top-business-schools/articles/2012/05/14/where-the-fortune-500-ceos-went-to-school 11

Zach Wenner et al., *Selective Service*, Wash. Monthly (Nov./Dec. 2013), http://www.washingtonmonthly.com/magazine/november_december_2013/features/selective_service047353.php?page=all 6, 7

Where are They Working: Top 3 Industries from 2013, Univ. of Tex. Sys. (2013), http://www.utsystem.edu/seekut/ images/Infographic-TopIndustries.png 9

STATEMENT OF INTEREST

Amici States Massachusetts, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Mississippi, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, and Washington, file this brief in support of the University of Texas at Austin Respondents as a matter of right pursuant to Sup. Ct. R. 37.4.

States play a vital role in educating the American people. Our public colleges and universities are gateways to leadership in the public and private sectors and are responsible for educating a significant portion of our state workforces. It is of critical importance to States that our public colleges and universities provide students with a high-quality education that prepares them to work in an increasingly diverse country and a multicultural, global economy. We therefore have a compelling interest in ensuring that these public institutions expose students to diverse experiences, perspectives, and ideas, and confer the educational benefits that can only be realized through a diverse student body.

States' compelling interest in diversity in higher education is underscored by the unique role that public colleges and universities play in providing access to affordable higher education and thus a path to social and economic mobility for all of our residents, including historically disadvantaged communities. Because higher education is critical to lifting families out of poverty, reducing inequality, and strengthening our state economies, States have an interest in ensuring that our public colleges and universities are accessible to all of our residents.

For these reasons, States also have an interest in ensuring that our selective public colleges and universities—with their varied needs, challenges, and objectives—have sufficient flexibility to craft admissions policies to achieve meaningful diversity.

SUMMARY OF ARGUMENT

Public colleges and universities educate the vast majority of post-secondary students in this country—including approximately three-quarters of all undergraduates. States rely on these institutions to prepare our public and private sector leaders, and our workforces generally, to serve diverse communities and to compete in a multicultural, global economy. The quality of these institutions thus depends in large part on their ability to compose their student bodies so that they provide all students with the benefits and advantages of exposure to diverse experiences, perspectives, and ideas.

Public higher education is also critical to breaking the cycle of poverty and disadvantage that continues to afflict many communities of color in the United States. However, higher education is also increasingly costly and thus out of reach for many. Students graduating today take on substantially more debt than previous generations and are more likely to default on that debt. This is particularly true for students of color, who are less likely to obtain a higher education and are disproportionately likely to incur significant debt when they do. The burden of this debt narrows choices after graduation and threatens the economic security of our States. As more affordable options, public colleges and universities have never been more important for providing access to high-quality higher education.

In order to achieve the many benefits of diversity in higher education, selective public colleges and universities need flexibility to craft workable admissions policies that will result in the enrollment of a student body that captures the many ways in which students can bring diversity to their schools, including racial diversity. We know from experience that in many cases it will be necessary—depending on the particular circumstances of the institution and the State—for selective public schools to take race into account to ensure meaningful diversity. As this Court's prior cases demonstrate, permitting these schools to take race into account, when necessary to achieve diversity and as just one of many considerations, requires neither tempering strict scrutiny nor otherwise offending equal protection principles. And the vitality of public higher education depends on it.

ARGUMENT

I. STATES HAVE A COMPELLING INTEREST IN PROVIDING FUTURE PUBLIC SERVANTS AND OTHER LEADERS WITH THE BENEFITS OF DIVERSITY IN PUBLIC HIGHER EDUCATION

Public colleges and universities play a central role in educating our future leaders and our workforces, both in the public and private sectors. While public schools make up only about a third of post-secondary institutions in the country,[1] they educate more than

---

[1] Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *Digest of Education Statistics, Table 317.20* (2014), https://nces.ed.gov/

seventy percent of post-secondary students, including seventy-five percent of undergraduate students.[2] Many of these students will go on to public service, including service in government agencies, nonprofit organizations, and public education, or to leadership in the private sector. The quality of the education these students receive is of unquestionable importance. It is critical that public colleges and universities prepare students to serve increasingly diverse communities and to compete in a multicultural, global marketplace.

There is broad consensus among social scientists, educators, and businesses that an education that includes exposure to diverse experiences, perspectives, and ideas best prepares future workers and leaders. Thus, the quality of public higher education depends in no small part on the ability of public colleges and universities to compose their student bodies so that they provide all students with the benefits and advantages of a diverse educational experience.

A. Public Colleges and Universities Are Gateways for Public Service and Other Forms of Civic Leadership

Public service is at the core of the missions of public colleges and universities—institutions that were

---

programs/digest/ d14/tables/dt14_317.20.asp?current=yes (last visited Oct. 30, 2015).

[2] Scott A. Ginder, Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *Enrollment in Postsecondary Institutions, Fall 2013; Financial Statistics, Fiscal Year 2013; and Employees in Postsecondary Institutions, Fall 2013* at 4 (2014) http://nces.ed.gov/pubs2015/2015012.pdf.

founded in large part to serve the public good.[3] The mission statements of most public universities continue to reflect basic common concerns: instruction, research, and service.[4] The mission of the University of Massachusetts, for example, is "to provide an affordable and accessible education of high quality and to conduct programs of research and public service that advance knowledge and improve the lives of the people of the Commonwealth, the nation, and the world."[5]

---

[3] Mindy L. Kornhaber, *Reconfiguring Admissions to Serve the Mission of Selective Public Higher Education* (Jan. 14, 1999) (unpublished manuscript) http://civilrightsproject.ucla.edu/research/college-access/admissions/reconfiguring-admissions-to-serve-the-mission-of-selective-public-higher-education/kornhaber-reconfiguring-admissions-1999.pdf.

[4] *Id.*; *see also* Lani Guinier, *The Supreme Court, 2002 Term – Comment: Admissions Rituals as Political Acts: Guardians at the Gates of our Democratic Ideals*, 117 Harv. L. Rev. 113, 125-26 (2003).

[5] *University of Massachusetts Mission Statement*, http://www.massachusetts.edu/about-umass-system/overview (last visited Oct. 30, 2015). Other state universities share similar purposes. The mission of the State University of New York, for example, includes "shar[ing] the expertise of the state university with the business, agricultural, governmental, labor and nonprofit sectors of the state through a program of public service for the purpose of enhancing the well-being of the people of the state of New York...." *State University of New York Mission Statement*, https://www.suny.edu/about/mission/ (last visited Oct. 30, 2015). Likewise, the mission of the University of Illinois is to "transform lives and serve society by educating, creating knowledge and putting knowledge to work on a large scale and with excellence." *University of Illinois Mission & Vision*, https://www.uillinois.edu/about/mission (last visited Oct. 30, 2015).

Alumni data show that graduates of public institutions take these principles to heart.

Public colleges and universities educate a significant percentage of public servants throughout the country. Overall, public universities comprise nearly a third of the fifty top-ranked universities nationwide, and significant numbers of graduates from each of these universities enter public service in government agencies, non-profit organizations, and public education.[6] During the ten-year period from 2000 to 2010, the percentage of graduates of these schools entering public service ranged from 32.1% of graduates of the College of William & Mary to 14% of graduates of Pennsylvania State University.[7] During the same timeframe, the University of Texas at Austin

---

[6] Zach Wenner et al., *Selective Service*, Wash. Monthly (Nov./Dec. 2013), at 15-16, http://www.washingtonmonthly.com/magazine/november_december_2013/features/selective_service047353.php?page=all.

[7] Of the universities ranked in the top fifty by U.S. News & World Report, 16 are state universities. The percentage of 2000-2010 graduates of each school entering public service was as follows: College of William & Mary (32.1%), University of North Carolina at Chapel Hill (23.1%), University of Wisconsin-Madison (22.2%), University of Virginia (21.7%), University of Michigan (21.7%), University of California-Davis (20.6%), University of California-Berkeley (20.0%), University of Illinois at Urbana-Champaign (19.2%), University of Florida (19.0%), University of Washington (18.8%), University of California-San Diego (18.5%), University of California-Santa Barbara (17.9%), University of California-Irvine (17.8%), University of Texas at Austin (17.6%), University of California-Los Angeles (17.6%), Penn State University (14.0%). *Id.*

sent 17.6% of its graduates into public service.[8] By comparison, only approximately 9.6% of all jobs in the economy are in the public sector.[9]

These public servants include many leaders in state government. In Massachusetts, for example, over 41% of current state legislators[10] and more than a third—approximately 37%—of appellate-court judges[11] were educated at public colleges and universities. Of the 181 members of the Texas state legislature, 33 (or 18%) are alumni of the University of Texas at Austin alone.[12] In New York, approximately 43% of legislators were educated at public colleges and universities.[13]

---

[8] *Id.*

[9] Michael Greenstone & Adam Looney, *A Record Decline in Government Jobs: Implications for the Economy and America's Workforce*, The Hamilton Project, Brookings Inst. (Aug. 3, 2012) http://www.brookings.edu/blogs/jobs/posts/2012/08/03-jobs-greenstone-looney.

[10] *See People*, Mass. Legislature, https://malegislature.gov/People (last visited Oct. 30, 2015).

[11] *See Appeals Court Justices*, Mass. Court Sys., http://www.mass.gov/courts/court-info/appealscourt/appeals-court-justices/ (last visited Oct. 30, 2015); *Supreme Judicial Court Justices*, Mass. Court Sys., http://www.mass.gov/courts/court-info/sjc/about/sjc-justices/ (last visited Oct. 30, 2015).

[12] *Longhorn Legislators*, Tex. Exes, https://www.texasexes.org/longhorn-legislators (last visited Oct. 30, 2015),

[13] *See Assembly Members*, N.Y. State Assembly, http://assembly.state.ny.us/mem/ (last visited Oct. 30, 2015); *Senators, Committees, and Other Legislative Groups*, N.Y. St.

And in California, two-thirds—approximately 67%—of legislators were educated at public schools.[14]

Nationally, the statistics are also striking. Approximately 42% of United States Senators and 48% of United States Representatives in the 114th Congress obtained bachelor's degrees from public colleges or universities.[15] In fact, of the 11 colleges with the most representation in the House of Representatives, just four are private, while seven are public.[16]

Of course, public service is not limited to service in the government. Many graduates of state colleges and universities go on to serve the public through work in fields like education, health care, non-profit organizations, and other social services. For example, the top two employment industries for recent graduates of the University of Texas system—graduates with

---

Senate, http://www.nysenate.gov/senators-committees (last visited Oct. 30, 2015).

[14] *See Members*, Cal State Assembly, http://assembly.ca.gov/assemblymembers (last visited Oct. 30, 2015); *Senators*, Cal. St. Senate, http://senate.ca.gov/senators (last visited Oct. 30, 2015).

[15] Tyler Hakes, *Senate U 2015: Where the 114th U.S. Senate Went to College*, College Raptor https://www.collegeraptor.com/blog/college-trends/senate-u-2015-where-the-114th-u-s-senate-went-to-college/ (last visited Oct. 30, 2015); Jeff Pierpont, *House of Reps: Where Did the House Go to College*, College Raptor, https://www.collegeraptor.com/blog/college-trends/house-of-reps-where-did-the-house-go-to-college-infographic/ (last visited Oct. 30, 2015).

[16] Pierpont, *supra* note 15.

bachelor's, master's, and doctoral degrees—were educational services (24%, 34%, and 56%, respectively) and health care and social assistance (20%, 19%, and 12% respectively).[17] The leadership and service provided by all of these graduates are of critical importance to States.

B. Public Institutions Also Prepare Students for Leadership and Work in the Private Sector

A majority of undergraduate students attend public colleges and universities in their own States,[18] and many remain in-state to work after graduation.[19] Most of these students will work in the private sector. Given the large number of students graduating from public institutions generally—especially flagship state

---

[17] *Where are They Working: Top 3 Industries from 2013*, Univ. of Tex. Sys. (2013), http://www.utsystem.edu/seekut/images/Infographic-TopIndustries.png (last visited Oct. 30, 2015).

[18] Lynn O'Shaughnessy, *The States Where College Students Stay Close to Home*, The College Solution (May 12, 2010), http://www.thecollegesolution.com/the-states-where-college-students-stay-close-to-home/ (last visited Oct. 30, 2015) (citing statistics published by The Chronicle of Higher Education).

[19] *See, e.g.*, UMass News & Media Relations, *About UMass*, https://www.umass.edu/newsoffice/resources/about-umass (last visited Oct. 30,2 015) (more than half of UMass Amherst alumni live in Massachusetts); Amia K. Foston & Tanya Hall, *Indiana Graduates and Brain Drain*, In Context, Indiana Business Research Center (Jan.-Feb. 2014), http://www.incontext.indiana.edu/2014/jan-feb/article1.asp (last visited Oct. 30, 2015) (55% of Indiana public university graduates remain working in the State five years after graduation).

schools—the reality is that a large percentage of most States' private workforces have been educated by in-state public colleges and universities.[20] The ability of these workforces to compete both nationally and globally is critical to our state economies.

Public colleges and universities also play an important role in educating leaders in the private sector—leaders who employ thousands and help to shape not only our state economies, but our national economy. Eight of the current top ten Fortune 500 companies, for example, are led by graduates of public universities: Wal-Mart Stores (University of Arkansas), Exxon Mobil (University of Texas at Austin), Chevron (University of California, Davis), Berkshire Hathaway (University of Nebraska), Apple (Auburn University), Phillips 66 (Texas A&M University), Ford Motor

---

[20] In 2010, the Wall Street Journal conducted a study of recruiting and hiring by the nation's largest public and private companies, nonprofit organizations, and government agencies. *See Paths to Professions*, Wall St. J. (Sept. 13, 2010), http://www.wsj.com/public/page/rankings-career-college-majors.html. The survey revealed, among other things, that many employers prefer graduates of big state universities over smaller, private liberal arts schools for entry-level positions. *See id.* Recruiters identified three state universities as their top choices for graduates best prepared for the workforce—Pennsylvania State University, Texas A&M University, and the University of Illinois at Urbana-Champaign—and 20 of the top 25 rated schools were public. *See id.* Moreover, the study found that many employers focus their recruiting and hiring on schools in their own cities and States. *See id.*

(Rutgers University), and Valero Energy (University of Missouri at St. Louis).[21]

Likewise, a number of public universities are among those that have educated the most Fortune 500 chief executive officers, including: University of Michigan at Ann Arbor, University of Virginia, Indiana University at Bloomington, Rutgers, Texas A&M University, Purdue University, and Pennsylvania State University.[22] These include some of the best-known and largest corporations in the country, such as Starbucks (Northern Michigan University), Microsoft (University of Wisconsin at Madison), and Honeywell International (University of New Hampshire).[23]

In short, public colleges and universities serve as a significant gateway to leadership in both the public and

---

[21] Peter Jacobs, *You'll Be Surprised by Where the Most Powerful Fortune 500 CEOs Went to College*, Business Insider (Mar. 26, 2015), http://www.businessinsider.com/where-fortune-500-ceos-went-to-college-2015-3.

[22] Menachem Wecker, *Where the Fortune 500 CEOs Went to School*, U.S. News & World Report (May 14, 2012), http://www.usnews.com/education/best-graduate-schools/top-business-schools/articles/2012/05/14/where-the-fortune-500-ceos-went-to-school; *Alma Mater Index: Global Executives 2013*, Times Higher Educ. (Sept. 5, 2013), https://www.timeshighereducation.com/news/alma-mater-index-global-executives-2013/2007032.article.

[23] Starbucks Newsroom, *Executive Team*, https://news.starbucks.com/leadership/howard-schultz (last visited Oct. 30, 2015); *Microsoft CEO*, http://news.microsoft.com/CEO/INDEX.HTML (last visited Oct. 30, 2015); *Honeywell Leadership*, https://honeywell.com/About/Honeywell leadership/Pages/david-cote.aspx (last visited Oct. 30, 2015).

private sectors and are responsible for educating a significant portion of the States' workforces. States therefore have a strong interest in ensuring that the students who attend these institutions receive a high-quality education.

C. Diversity in Higher Education Best Prepares Graduates to Work and Serve in a Diverse Country and Multicultural World

Given the missions of our public colleges and universities and the role they play in educating our public and private workforces, it is crucial that these institutions provide an education that exposes students to diverse experiences, perspectives, and ideas. This need for diversity arises from the very essence of what it means to be an institution of higher learning, a place seeking to shape minds:

> Education is a special, deeply political, almost sacred civic activity. It is not merely a technical enterprise—providing facts to the untutored. Inescapably, it is a moral and aesthetic enterprise—expressing to impressionable minds a set of convictions about how most nobly to live in the world.

Glenn C. Loury, *Foreword* to William G. Bowen & Derek Bok, *The Shape of the River*, at xxii (1999).

Today, preparing our students "to live in the world" necessarily involves preparing them to work and serve in a heterogeneous world, including an increasingly diverse country. As of the 2010 U.S. Census, African Americans, Native Americans, Asian Americans, and Hispanics collectively made up approximately 35% of

the nation's population.[24] In 2014, minority groups collectively made up approximately 40% of the population.[25] By some estimates, minority groups will make up more than 50% of the population by 2044.[26] People of color already form the majority in a number of States.[27] Americans are diverse not only in terms of race and ethnicity, of course, but also in language, religion, and socioeconomic status, among other traits. There is broad consensus among educators and scholars that our students' future success requires that they learn in diverse academic environments.

A growing body of research confirms that diversity in higher education enhances student learning in a number of ways.[28] Students learn not only from their

---

[24] U.S. Census Bureau, *Overview of Race and Hispanic Origin: 2010*, at 4 tbl.1 (2011), http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf.

[25] U.S. Census Bureau, *Projections of the Size and Composition of the U.S. Population: 2014 to 2060*, at 9 tbl.2 (2015), https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf.

[26] *Id.* at 1.

[27] California, the District of Columbia, Hawaii, New Mexico, and Texas all have populations that are majority-minority (i.e., over 50 percent of the population is a member of a minority racial or ethnic group). *See Overview of Race and Hispanic Origins: 2010*, *supra* note 24, at 18 tbl.11.

[28] Nida Denson & Mitchell J. Chang, *Racial Diversity Matters: The Impact of Diversity-Related Student Engagement and Institutional Context*, 46 Am. Educ. Res. J. 322, 347 (2009) ("The issue

professors, but also from each other, and benefit significantly from interactions with peers whose experiences are different than their own.[29] Diversity often helps students to consider other perspectives, improve their cultural awareness, and relate better to individuals from different backgrounds.[30] Students who are not themselves engaged with diversity also benefit indirectly from the normative effects of being educated on campuses where students generally are engaged through both knowledge acquisition and cross-racial interactions.[31] The evidence that such engagement affects students' cognitive development is strong.[32] The positive effects of being exposed to diversity include an inclination toward more effortful and complex styles of thinking, as well as improved critical thinking and problem solving.[33]

---

concerning whether or not racial diversity adds value in higher education seems to be well settled in educational research.").

[29] Jiali Luo & David Jamieson-Drake, *A Retrospective Assessment of the Educational Benefits of Interaction Across Racial Boundaries*, 50 J. C. Student Dev. 67, 67-68 (2009) (collecting research).

[30] *Id.*

[31] *See id.* at 81-82.

[32] Nicholas A. Bowman, *College Diversity Experiences and Cognitive Development: A Meta-Analysis*, 80 Rev. Educ. Res. 4 (2010).

[33] *Id.*; *see also* Anthony Lising Antonio, et al., *Effects of Racial Diversity on Complex Thinking in College Students*, 15 Psychol. Sci. 507 (2004).

The experience of attending college in a diverse environment also helps students to develop specific abilities and attributes that are particularly important to public service and other leadership. Studies reveal a consistent and significant positive relationship between college-level exposure to diversity and "civic engagement," including civic behaviors like service and political activity, commitment to and valuing social action, social-justice orientation, and leadership skills.[34] Similarly, across disciplinary contexts, exposure to diversity in college enhances the development of "pluralistic abilities and dispositions,"[35] defined to include: "the ability to see multiple perspectives; the ability to work cooperatively with diverse people; the ability to discuss and negotiate controversial issues; openness to having one's views challenged; and tolerance of others with different beliefs."[36] All of these skills and attributes are essential to success working in diverse environments and serving diverse communities.

Indeed, the businesses driving our state economies strongly support efforts to train a workforce well-equipped to lead in a diverse country and compete in a

---

[34] Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civil Engagement*, 81 Rev. Educ. Res. 29, 46-47 (2011).

[35] Mark E. Engberg, *Educating the Workforce for the 21st Century: A Cross-Disciplinary Analysis of the Impact of the Undergraduate Experience on Students' Development of a Pluralistic Orientation*, 48 Res. Higher Educ. 283, 308 (2007).

[36] *See id.* at 285.

multicultural world. As many of these businesses previously expressed to this Court:

> The students of today are this country's corporate and community leaders of the next half-century. For these students to realize their potential as leaders, it is essential that they be educated in an environment where they are exposed to diverse people, ideas, perspectives, and interactions. In the experience of the *amici* businesses, today's global marketplace and the increasing diversity in the American population demand the cross-cultural experience and understanding gained from such an education.

Brief for Amici Curiae 65 Leading American Businesses in Support of Respondents at 2, *Grutter v. Bollinger, 539 U.S. 306 (2003); see also Brief of General Motors Corporation as Amicus Curiae in Support of Respondents* at 12, *Grutter, 539 U.S. 306.* ("Demographic changes in the racial and ethnic composition of business work forces, customer bases, and pools of potential business partners increasingly necessitate that entrants into the managerial levels of the business world come equipped with the abilities to work creatively with persons of any race, ethnicity, or culture and to understand views influenced by those traits.").

Finally, diversity is also critically important to the legitimacy of public colleges and universities and thus to the value of the education they provide to our future leaders. As the Court has recognized:

> In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is

> necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training.

Grutter v. Bollinger, 539 U.S. 306, 332 (2003). Only when public colleges and universities offer a diverse educational experience—including through student bodies that are representative of our broader society—can these institutions fully realize their mission to educate our future leaders and serve the public good.

II. STATES' COMPELLING INTEREST IN DIVERSITY IN HIGHER EDUCATION IS UNDERSCORED BY THE IMPORTANT ROLE STATE INSTITUTIONS PLAY IN PROVIDING OPPORTUNITY TO STUDENTS FROM HISTORICALLY DISADVANTAGED COMMUNITIES

The States' compelling interest in diversity in higher education is underscored by the outsized role that public colleges and universities play in breaking the cycle of poverty and disadvantage that continues to afflict many communities of color. While the quality of elementary and secondary education often is tied to residential neighborhoods that continue to be segregated by race and income, higher education is not so limited. Nevertheless, the mounting costs of higher education place it out of reach for many, and participation and graduation rates for many men and

women of color are still disproportionately low.[37] The more affordable education offered by public colleges and universities can help to bridge these gaps. In fact, public institutions are increasingly important to providing access to high-quality higher education and thus a path to social and economic mobility for many individuals, including in historically disadvantaged communities.

A. Public Colleges and Universities Provide Access to Opportunity and Economic Mobility

Wealth means economic security, opportunity, and mobility for individuals and their families. Wealth helps families to move to better and safer neighborhoods, purchase homes, invest in businesses, save for retirement, and send their children to college, and it provides a measure of security when families experience periods of unemployment or other crises.[38] Wealth also allows for the intergenerational transmission of assets.[39]

---

[37] Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *Higher Education: Gaps in Access and Persistence Study*, v, xvi, 166, 170, 187, 206, 209, 216 (August 2012), https://nces.ed.gov/pubs2012/2012046.pdf (last visited Oct. 30, 2015).

[38] Ana Patricia Munoz et al., Fed. Reserve Bank of Bos., *The Color of Wealth in Boston*, 1 (2015), http://www.bostonfed.org/commdev/color-of-wealth/color-of-wealth.pdf; Thomas Shapiro, et al., Inst. on Assets & Soc. Policy, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide* 1 (2013), http://iasp.brandeis.edu/pdfs/Author/shapiro-thomas-m/racialwealthgapbrief.pdf.

[39] Munoz, *supra* note 38, at 3.

These advantages and protections are not equally available to all families. An already persistent gap in wealth between white households and households of color in the United States has expanded in recent years.[40] From 2010 to 2013, the median wealth of white households increased from eight times the wealth of black households to 13 times.[41] During the same time period, the median wealth of white households increased from nine times the wealth of Hispanic households to more than ten times.[42] These wealth gaps are at or near their highest levels in the 30 years for which data are available.[43] Although there are a number of factors both causing and perpetuating this racial disparity in wealth—such that no one solution is sufficient to close the gap alone—providing access to high-quality higher education is a key means by which this disparity can be reduced.

Higher education increases income and wealth and thus continues to be a primary pathway to upward mobility in this country.[44] The median income of

---

[40] Shapiro, *supra* note 38.

[41] Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Pew Res. Ctr.: Fact Tank (Dec. 12, 2014), http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/.

[42] *Id.*

[43] *Id.*

[44] Greg J. Duncan & Richard J. Murnane, Russell Sage Foundation, *Restoring Opportunity: The Crisis of Inequality and the Challenge for American Education* 20 (2014).

households headed by someone with a college degree is two to three times the income of lesser-educated households.[45] College-educated families also have between three and ten times more wealth than their same-race counterparts without degrees.[46] This greater wealth means greater economic mobility.

Only ten percent of people raised in the bottom quintile of family income who earn a four-year college degree remain at the bottom, compared with almost half (47%) of those do not earn a degree.[47] The connection between a college degree and increasing family wealth is similarly strong.[48] In other words, a low-income individual without a college degree is very likely to remain poor, whereas someone with a degree is more likely to move into a higher income or wealth bracket. In fact, a college degree makes it three times more likely that a person will rise from the bottom income quintile to the top, and more than four times

---

[45] William R. Emmons & Bryan J. Noeth, Fed. Reserve Bank of St. Louis, *Why Didn't Higher Education Protect Hispanic and Black Wealth?*, In the Balance: Perspectives on Household Balance Sheets (Aug. 2015), https://www.stlouisfed.org/~/media/Publications/In%20the%20Balance/Images/Issue_12/ITB_August_2015.pdf.

[46] *Id.*

[47] Pew Charitable Trusts, *Pursuing the American Dream: Economic Mobility Across Generations*, 3 (2012), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/economic_mobility/pursuingamericandreampdf.pdf.

[48] *Id.*

more likely that a person will rise from the bottom wealth quintile to the top.[49]

At the same time, however, the cost of higher education has more than doubled in the last two decades, and there is a widening gap in educational attainment between children from low-income families (disproportionately likely to be minorities) and children from upper-income families (more likely to be white).[50] While half of all individuals from upper-income families have a college degree by age 25, only ten percent from low-income families do.[51] In this context, affordable public higher education has never been more important.

The States' public colleges and universities offer a combination of affordability and quality that provides many students—including low-income, minority, and

---

[49] *Id.*

[50] Duncan & Murnane, *supra* note 44, p. 20; Shapiro, *supra* note 38, at 5 ("In the past 30 years, the gap between students from low- and high-income families who earn bachelor's degrees has grown from 31 percent to 45 percent."); see *also* Pew Charitable Trusts, *supra* note 47, at 3 (two-thirds of blacks were raised at the bottom of the income ladder compared with 11 percent of whites).

[51] Exec. Office of the President, *Increasing College Opportunity for Low-Income Students*, 3 (2014), https://www.whitehouse.gov/sites/default/files/docs/white_house_report_on_increasing_college_opportunity_for_low-income_students_1-16-2014_final.pdf, (citing Martha J. Bailey & Susan M. Dynarski, *Inequality in Postsecondary Attainment*, Greg Duncan and Richard Murnane, eds., Whither Opportunity?: Rising Inequality, Schools, and Children's Life Chances, pp. 117-132, Russell Sage Foundation (2011)).

first-generation college students—with the best chance of moving beyond their parents' economic status.[52]

B. Public Colleges and Universities Are Increasingly Important As the Costs of Higher Education and Student Debt Continue to Rise

Students today increasingly find that they cannot afford the price of the economic security that a college education provides and must resort to student loans in ever-rising amounts. As a result, outstanding American student-loan debt now exceeds one trillion dollars and has surpassed credit-card lending as the largest source of unsecured household debt.[53] Moreover, the Consumer Financial Protection Bureau estimates that more than one in four student loans is presently delinquent or in default.[54] We are experiencing a student debt crisis in this country, and the consequences can be devastating for students.

---

[52] *Id.* at 4 ("Relative to their high-income peers, low-income students are less likely to attend colleges and universities that give them the best chances of success. . . . Students who attend selective institutions, which tend to have more resources available for student supports, have better education outcomes, even after controlling for student ability").

[53] *See* Meta Brown et al., Fed. Reserve Bank of N.Y.: Liberty Street Economics, *The Student Loan Landscape* (Feb. 18, 2015) http://libertystreeteconomics.newyorkfed.org/2015/02/the_student_loan-landscape.html.

[54] Consumer Fin. Prot. Bureau, *Student Loan Servicing: Analysis of Public Input and Recommendations for Reform* 3 (2015).

Making matters worse, students of color are suffering in this crisis in disproportionate numbers. They are more likely to need student loans and less likely to be able to repay those loans, and they disproportionately attend high-cost for-profit institutions. Although the particular students benefitted by the University of Texas admissions program at issue here might not otherwise attend for-profit institutions, mitigating this crisis and improving the outlook for all students—including students of color—through affordable higher education is a pressing policy imperative for States.

1. Rising Private Tuition Costs Have Saddled Students—Including Students of Color—With Burdensome Debt, Limiting Their Choices and Opportunities

Over the last half century, the cost of higher education has increased at roughly one-and-a-half to two times the rate of overall inflation,[55] and the gulf between the costs of private and public schools has widened. In 1982, the average inflation-adjusted cost of a year's education at a private college or university was $16,311, compared to $6,941 at a public institution.[56] By 2012, the price tag for private school had grown to $34,483, while the price of public school

---

[55] *Tuition Inflation*, FinAid, http://www.finaid.org/savings/tuition-inflation.phtml (last visited Oct. 30, 2015).

[56] Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *Fast Facts: Tuition Costs of Colleges and Universities* (2015), http://nces.ed.gov/FastFacts/ display.asp?id=76 (last visited Oct. 30, 2015) (in constant 2012-2013 dollars).

had risen to $15,022—still less than the cost of a private education 30 years prior.[57] Students have paid the escalating bill for higher education by incurring ever-greater student-loan debt. Students graduating with debt in recent years have an average of roughly $11,000 more in outstanding loans than those who graduated in 1990.[58] The percentage of 25-year-old graduates with student debt increased from 25% in 2003 to 43% in 2012, and, during that same time period, average loan balances for these recent graduates grew from $10,649 to $20,326.[59]

Nowhere is the new reality of student debt more evident than at private institutions, where the average debt carried after graduation ranges between $31,300 and $40,200.[60] The great majority of students who attend private colleges and universities depend on loans to finance their education. In 2012, for example, 68% of students graduating from private non-profit

---

[57] *Id.*

[58] *See* Phil Izzo, *Congratulations to Class of 2014, Most Indebted Ever*, Wall St. J.: The Numbers, (May 16, 2014) http://blogs.wsj.com/numbers/congatulations-to-class-of-2014-the-most-indebted-ever-1368/; Nat'l Ctr for Educ. Statistics, U.S. Dep't of Educ., *Digest of Educ. Statistics, Table 331.95* (2014), http://nces.ed.gov/programs/digest/d14/tables/dt14_331.95.asp (last visited Oct. 30, 2015).

[59] Meta Brown & Sydnee Caldwell, Fed. Reserve Bank of N.Y.: Liberty St. Econ., *Young Student Loan Borrowers Retreat from Housing and Auto Markets* (Apr. 27. 2013), http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html.

[60] Nat'l Ctr. For Educ. Statistics, *supra* note 58.

schools borrowed to pay for their education.[61] However, borrowing is even more prevalent at for-profit schools. That same year, 84% of for-profit graduates borrowed to pay for school.[62] Students of four-year, for-profit schools graduated with an average of $39,950 in debt, 43% percent more than 2012 graduates from other types of four-year colleges.[63] Students of color shoulder the consequences of the for-profit education industry to a disproportionate degree, comprising almost half of all students enrolled at for-profit schools.[64] African-American students, in particular, comprise 14.7% of undergraduates across all institutions, but they are 29.1% of undergraduates at for-profit schools.[65]

---

[61] Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., Digest of Education Statistics, *Table 331.60,* (2014), http://nces.ed.gov/programs/digest/d14/tables/dt14_331.60.asp (last visited Oct. 30, 2015).

[62] *Id.*

[63] Inst. for College Access & Success, *Student Debt and the Class of 2013*, at 11 (2014), http://ticas.org/sites/default/files/legacy/files/pub/classof2013.pdf.

[64] Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *Students Attending For-Profit Postsecondary Institutions: Demographics, Enrollment Characteristics, and 6-Year Outcomes*, at tbl.2 (2011), http://nces.ed.gov/pubs2012/2012173.pdf (showing that 24.7% of for-profit students in 2007-2008 were Black, 21% were Hispanic or Latino, and 3.9% were Asian).

[65] Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *Digest of Education Statistics, Table 306.50,* (2014), http://nces.ed.gov/programs/digest/d14/tables/dt14_306.50.asp?current=yes.

Students of color are also more likely to require loans to pay for tuition, regardless of where they go to school.[66] In the class of 2012, 90.3% of African-American students and 72.3% of Hispanic students borrowed to pay for college, compared to 65.5% of white students.[67] Students of color also typically incur larger loan debts. For example, 27% percent of African-American students who earned a bachelor's degree in 2007-2008 borrowed more than $30,500 to pay for their degree, compared to 16% of white students.[68]

These disparities in borrowing have long-lasting economic consequences. Graduates burdened by high levels of student-loan debt are less likely to achieve important life milestones, including milestones connected to the building of family wealth. They are less likely to own a home or a car.[69] They are less likely to build positive credit histories.[70] Parents who continue to carry their own student-loan debt have, on average, $16,000 less in college savings for their teenage children, thereby increasing the likelihood that

---

[66] *See* Nat'l Ctr. For Educ. Statistics, *supra* note 58.

[67] *Id.*

[68] Sandy Baum & Patricia Steele, College Bd. Advocacy & Policy Ctr., *Who Borrows Most? Bachelor's Degree Recipients with High Levels of Student Debt* 6 (2010), https://trends.collegeboard.org/sites/default/files/trends-2010-who-borrows-most-brief.pdf.

[69] *See* Brown, *supra* note 59.

[70] *Id.*

the burden of student debt will continue to the next generation.[71]

Student-loan debt also constrains job choices. Graduates with high student-loan debt are less likely to start new small businesses, a category of employers that account for 60% of American job creation.[72] Graduates with high debt are similarly less likely to seek public-interest employment.[73]

Student-loan debtors also face more severe consequences than other debtors when they cannot afford their loans and default on monthly payments. Federal student loan creditors have access to enhanced collection powers. They can garnish the wages of student-loan borrowers through a simple administrative process, without any need for judicial authorization.[74] When a debt is past due, the U.S. Treasury can withhold tax refunds or federal antipoverty benefits and transfer the money to the U.S.

---

[71] Josh Boak, *A Multigenerational Hit: Student Debt Traps Parents and Kids*, St. Louis Post-Dispatch (Oct. 5, 2015), http://www.stltoday.com/business/national-and-international/a-multigenerational-hit-student-debt-traps-parents-and-kids/article_3d2f5adb-538f-5ec8-8314-8977ff4f3048.html.

[72] *See* Brent W. Ambrose, et al., *The Impact of Student Loan Debt on Small Business Formation* 1-4 (July 15, 2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2417676.

[73] *See* Jesse Rothstein & Cecelia Elena Rouse, *Constrained After College: Student Loans and Early Career Occupational Choices* 4 (Nat'l Bureau Econ. Research Working Paper 13117, May 2007), http://www.nber.org/papers/w13117.pdf.

[74] *See generally* 31 C.F.R. § 285.11 (2015).

Department of Education to pay the debt.[75] Furthermore, student-loan debt cannot be discharged in the ordinary course of a bankruptcy.[76] Struggling students therefore have few options to avoid negative credit reporting and the damage such reporting causes to their prospects for housing, employment, and other economic opportunities. As the U.S. Department of Education advises students, delinquent student-loan borrowers may have difficulty "signing up for utilities, obtaining home owner's insurance, purchasing a cellphone plan, or obtaining approval to rent an apartment."[77]

Students at for-profit schools—who, as set forth above, are disproportionately likely to be students of color[78]—are especially likely to face these hardships. Approximately 20% of students who graduated from for-profit schools between 2009 and 2011 defaulted in the three years following their graduation.[79] Among

---

[75] *See* 31 U.S.C. § 3720A(c) (2012) (tax refund offset); 31 U.S.C. § 3716(c)(1)(A) (2012) (administrative offset). *See also Treasury Offset Program (TOP)*, Bureau of the Fiscal Serv., https://fiscal.treasury.gov/fsservices/gov/debtColl/dms/top/debt_top.htm (last visited Oct. 30, 2015).

[76] *See* 11 U.S.C. § 523(a)(8) (2012).

[77] *Understanding Default*, Fed. Student Aid, U.S. Dep't of Educ., https://studentaid.ed.gov/sa/repay-loans/default (last visited Oct. 30, 2015).

[78] *See* Nat'l Ctr. For Educ. Statistics, *supra*, note 64, at tbl.2.

[79] Grace Kena et al., Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., *The Condition of Education 2015*, at 233 fig.4 (2015), http://nces.ed.gov/pubs2015/2015144.pdf.

the class of 2012, for-profit school students were ten percent of student loan borrowers, but represented 39% of students who defaulted on their loan payments within three years following graduation.[80] For these students, the burdens of debt have been particularly challenging to overcome, because many institutions saddled them with debt while also failing to provide the training needed to enhance their job opportunities. Many States are aggressively pursuing efforts to obtain relief for students harmed by the most egregious misconduct by for-profit schools.[81]

In short, the rising costs of higher education and corresponding increases in student-loan debt have serious consequences, especially for students of color.

2. Public Colleges and Universities Offer a More Affordable Option for High-Quality Higher Education

By contrast, public colleges and universities present an affordable alternative to high-cost private institutions. Though all tuition costs have risen over the past two decades, tuition costs remain substantially lower at public schools. The average in-state tuition at a four-year public college or university in 2014-2015 was $9,139, compared to $31,231 at a four-year private

---

[80] Inst. for College Access & Success, *Default Rate Declines, Yet 611,000 Defaulted on Federal Student Loans* (2015), at 1 http://ticas.org/sites/default/files/pub_files/cdr_2015_nr.pdf.

[81] *See generally* Nat'l Consumer Law Ctr., *Government Investigations and Lawsuits Involving For-Profit Schools (2004 – May 2014)* (2014), https://www.nclc.org/images/pdf/pr-reports/for-profit-gov-investigations.pdf.

nonprofit school.[82] As a result, students of these institutions are required to borrow much less. Only 12% of four-year public school graduates carry student loans in excess of $40,000, compared to 18% overall.[83] The average indebtedness of public school graduates is significantly lower than their private counterparts—for the undergraduate class of 2012, between $21,600 and $24,000, compared to $31,400 to $40,200.[84]

Selective public colleges and universities, in particular, are much more affordable than their private counterparts. The top 25 public national universities, as measured by U.S. News and World Report, currently charge an average annual in-state tuition of $12,890, while the top 25 private national universities charge an average tuition of $47,863 each year.[85] The annual in-

---

[82] The College Board, *Trends in College Pricing 2014*, at 10 Table 1A (2014), https://secure-media.collegeboard.org/digitalServices/misc/trends/2014-trends-college-pricing-report-final.pdf.

[83] The College Board, *Trends in Student Aid 2014*, at 23 Figure 14A (2014), https://secure-media.collegeboard.org/digitalServices/misc/trends/2014-trends-student-aid-report-final.pdf.

[84] *See* Nat'l Ctr. for Educ. Statistics, *supra*, note 58. The average debt for those graduating with loans, in 2013-2014 dollars, was $24,000 for undergraduates attending a public doctoral-granting institution, $21,600 for undergraduates attending other public four-year schools, $40,200 for undergraduates attending two-year and above for-profit institutions, and $31,300 for undergraduates attending private, non-profit, four-year doctoral-granting institutions.

[85] *See National Universities Rankings*, U.S. News & World Report, http://colleges.usnews.rankingsandreviews.com/best-colleges/

state tuition at the University of Texas, for example, is just $9,830.[86] While selective colleges and universities are not right for all students, ensuring open access to affordable public institutions is essential to the financial well-being of our States' students generally. The welfare of our students and of our States more broadly depends upon States' ability to ensure that public colleges and universities both provide an affordable education to a diverse array of future leaders and workers, and provide the highest quality education possible for all students.

III. STATES NEED FLEXIBILITY IN TAILORING ADMISSIONS POLICIES TO MEET THE NEEDS OF OUR VARIED EDUCATIONAL SYSTEMS

In order to achieve the benefits of diversity in higher education, state colleges and universities need the ability to craft admissions policies that consider the needs, challenges, and objectives that are particular to each institution and the States where they are located. We know from experience that in many cases it will be necessary for selective schools to take race into account, among many other characteristics, to ensure that the diversity of their student bodies includes meaningful racial diversity. The Court has confirmed at least three times that there is a compelling

---

rankings/national-universities?int=9ff208 (last visited Oct. 30, 2015).

[86] *University of Texas at Austin*, U.S. News & World Report, http://colleges.usnews.rankingsandreviews.com/best-colleges/university-of-texas-3658 (last visited Oct. 30, 2015).

governmental interest in the educational benefits of diversity. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978); *Grutter*, 539 U.S. 306; *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013) ("*Fisher I*"). If public colleges and universities are to make this constitutionally permissible objective a reality, the strict scrutiny analysis must not leave these institutions without any viable means of achieving it.

The Court held in *Fisher I* that strict scrutiny does not permit deference to public universities in the analysis of whether the means they have chosen to attain diversity are narrowly tailored to that goal. 133 S. Ct. at 2420. The Court also reiterated, however, that strict scrutiny must not be "strict in theory, but fatal in fact." *Id.* at 2421 (citations omitted). In particular, the Court held in both *Grutter* and *Fisher I* that narrow tailoring does not require "exhaustion of every *conceivable* race-neutral alternative," although "a reviewing court must ultimately be satisfied that no workable race-neutral alternatives would produce the educational benefits of diversity." *Id.* at 2420 (emphasis in original); *Grutter*, 539 U.S. at 339. Thus, the exacting inquiry required by the Equal Protection Clause does not preclude giving some measure of practical leeway to university administrators in designing admissions policies to include race-conscious criteria when necessary to achieve diversity.

Allowing public institutions leeway to design their own admissions criteria, within the stringent constitutional limits set by *Bakke*, *Grutter*, and *Fisher I*, recognizes the practical reality that no two universities, and no two States, are exactly alike. Demographics and residential living patterns vary

from State to State. The number and type of colleges and universities—and thus the available educational options—can vary significantly from State to State. The relative role of public institutions also can vary, along with the histories, academic missions, and applicant pools of such institutions. Furthermore, few of these conditions are static. These factors highlight the importance of the Court's holding in *Schuette v. Coalition to Defend Affirmative Action*, 134 S. Ct. 1623 (2014), that States have a critical role to play in debating and making determinations about what approaches to diversity best suit their needs.[87] 134 S. Ct. at 1630.

States already know from experience that race-conscious admissions policies sometimes are the only way to achieve the degree of diversity—both at the university and classroom level—that will confer the educational benefits discussed in Parts I and II, *supra*. The shortcomings of the many race-neutral admissions policies employed by the University of Texas are well documented. *See generally Fisher v. Univ. of Texas at Austin*, 758 F.3d 633, 644-658 (5th Cir. 2014). The University adopted a Top Ten Percent Plan, of course, but also implemented comprehensive outreach,

---

[87] Granting public colleges and universities flexibility is also grounded in long-standing principles of academic freedom. The Court has recognized that the academic freedom of our universities is a "transcendent value," and that its safeguarding is "a special concern of the First Amendment." *Grutter*, 539 U.S. at 324 (quoting *Bakke*, 438 U.S. at 314 (Powell, J., concurring)). A university's selection of its student body is an important component of academic freedom and, accordingly, "a university must have wide discretion in making sensitive judgments as to who should be admitted." *Bakke*, 438 U.S. at 314.

recruiting, and scholarship programs. *Id.* at 647-49. "Put simply, [the] record shows that UT Austin implemented every race-neutral effort that its detractors now insist must be exhausted prior to adopting a race-conscious admissions program—in addition to an automatic admissions plan not required under *Grutter* that admits over 80% of the student body with no facial use of race at all." *Id.* at 649. Despite these efforts, minority representation at the University failed to reach a critical mass, and the University's race-neutral policies left out a pool of minority students with higher average test scores, worthy records of personal achievement, and other unique skills that could not be captured without the supplemental use of a holistic review including race among many other factors. *Id.* at 650.

Other states have had similar difficulty. The University of California ("UC"), for example, has struggled to achieve diversity since the State's voters approved Proposition 209 in 1996, prohibiting race-conscious admissions in public education. In the immediate aftermath of Proposition 209, the rates at which underrepresented minority students applied, were admitted, and enrolled at UC fell significantly at every campus. *Brief Amicus Curiae of the President and Chancellors of the University of California* at 17-19, *Fisher I, 133 S. Ct. 2411.* Since then, the race-neutral measures UC has implemented—including an outreach task force, a percentage plan, a holistic review process, and reduced reliance on standardized tests—"have not enabled it to achieve a 'critical mass' of certain minority students, particularly African-American students, at its most selective campuses. Nor have they enabled it to assemble a student body

that fully reflects the racial and ethnic diversity of the pool of state high school applicants from which those campuses draw." *Id.* at 15.

Whether race-conscious admissions policies are right for a particular college or university and precisely how such policies are formulated will vary along with the circumstances of each state institution. The Court should thus hew to its repeated determination that States need not exhaust every imaginable alternative, without regard to whether such alternatives are actually workable and effective. Doing so would, in effect, render strict scrutiny fatal in fact.

For these reasons, the Court should harmonize the various constitutional interests implicated here by continuing to allow public institutions the same degree of practical flexibility in narrowly tailoring their methods for achieving diversity that this Court has already granted. *See Fisher I*, 133 S. Ct. 2420; *Grutter*, 539 U.S. at 337. Doing so will not give undue deference to state actors, or otherwise violate equal protection principles. Rather, true to the essence of strict scrutiny, it will give States an opportunity to carefully tailor admissions policies to serve compelling interests in a way that takes "relevant differences" into account. *Grutter*, 539 U.S. at 334 (citations omitted).

Holding that Respondents' limited consideration of race in university admissions following years of experimentation with race-neutral alternatives does not satisfy strict scrutiny would jeopardize the ability of any public college or university to meet the standard. Such a result would preclude students at many public institutions from fully experiencing diversity—

including racial diversity—and its many educational benefits.

*****

Public colleges and universities are of critical importance to our States. They educate many of our future leaders and a significant portion of our workforces. They also offer an affordable alternative to expensive private institutions and thus a much-needed path to social and economic opportunity and mobility. Admissions policies at public colleges and universities thus have consequences that extend far beyond the four walls of the classroom and the years students spend at these schools. In order to fulfill the promise of higher education, public colleges and universities must be able ensure that they enroll diverse student bodies and provide all students with the benefits and advantages of a diverse educational experience.

CONCLUSION

For the foregoing reasons, the *Amici* States respectfully submit that the Court should affirm the judgment of the court of appeals.

Respectfully submitted,

MAURA HEALEY
Attorney General of Massachusetts
ELIZABETH N. DEWAR
Assistant State Solicitor
GENEVIEVE C. NADEAU*
JARED RINEHIMER
KIMBERLY STROVINK
MAX WEINSTEIN
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
genevieve.nadeau@state.ma.us
(617) 727-2200
**Counsel of Record*

November 2, 2015